

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	No. 63162-4-I
KAHLIN JEFFERSON,	)	
	)	
Respondent and Cross Appellant,	)	DIVISION ONE
	)	
and	)	UNPUBLISHED OPINION
	)	
PETER JEFFERSON,	)	
	)	
Appellant and Cross Respondent.	)	FILED: February 16, 2010
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Appelwick, J. — Peter Jefferson seeks review of the trial court’s denial of his petition for a major modification of the parenting plan for his son, Luke. Peter has not shown that the substantial change of circumstances requirement was met nor that the modification would be in the best interests of the child, as required under RCW 26.09.260(1). We affirm.

### FACTS

Kahlin Mish and Peter Jefferson married on June 13, 2000. Their son, Luke, was born on November 10, 2000.<sup>1</sup> The couple separated following a serious domestic violence incident, during which Peter<sup>2</sup> punched Kahlin in the face and stomach, banged her head against the floor, and severely injured her right hand. The assault left Kahlin with a permanent loss of vision in her left eye.

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<sup>1</sup> Peter has two older daughters, Chelsea and Larkin, from another marriage.

<sup>2</sup> Reference to the parties by their first names is for convenience of identification.

As a dental hygienist, Kahlin had to retrain to use her non-dominant hand. Peter was found guilty of unlawful imprisonment and assault in the fourth degree, for which he served three months. The court ordered Peter to complete a state-certified domestic violence treatment program with Dr. Roland Maiuro.

Dr. Teri Hastings, the guardian ad litem (GAL) appointed for Luke during the couple's dissolution action, issued a report in July 2003. Dr. Hastings concluded that interaction with Peter would pose a significant risk to the child. She recommended that a GAL be appointed for Luke, that Peter complete Dr. Maiuro's program, that Peter continue to have no contact with Luke until the GAL determined that supervised visitation was appropriate, that the GAL be given decision-making authority over Peter's access to Luke, and that the GAL should recommend additional therapy for Peter after completion of the domestic violence treatment. The parenting plan, entered in October 2003, adopted Dr. Hastings's recommendations and appointed her as Luke's GAL.

Peter began supervised visitation with Luke in August 2004, which generally took place on alternate Saturdays and some holidays. Peter was responsible for paying the supervisor for each visit. During this period, Peter began therapy with Dr. Timothy Cahn, a psychologist, for treatment of domestic violence issues.

In 2005, Peter sought review of the parenting plan. Dr. Hastings had resigned, and Rosie Anderson replaced her as the GAL. Anderson's report in August 2006 concluded that, because there had not been a substantial change

in circumstances, the original parenting plan should remain in effect. In December 2006, the court referred the parties to arbitration.

The arbitration order specified that the October 2003 parenting plan would remain in effect, except as provided in the order. The arbitration order appointed Don Layton as the case manager, who became responsible for resolving minor disputes. Anderson was to remain the GAL, but the parties agreed to the order divesting her of decision-making authority. The parties also agreed to supervised visits on alternate Saturdays, for up to six hours per visit. The case manager was responsible for further developing the visitation plan and schedule. Finally, the parties agreed to delete the provision from the 2003 plan that would have allowed future review of the parenting plan under RCW 26.09.187. Instead, they added a provision reading:

After October 1, 2007 either party shall have the right to petition the Court to modify the Father's visitation schedule, if either the Case Manager or the Guardian ad Litem so recommends. In this event, the parties agree to waive a finding of adequate cause and a new parenting evaluator [will be] appointed by the Court at that time. In the event the petition is found to be frivolous, the Court shall award reasonable, actual attorney's fees and costs to the non-moving party.

The trial court entered a review order filed on March 1, 2007, reflecting the agreements from arbitration.

In September 2007, Layton recommended a review under the March 1, 2007 review order. He suggested that consideration be given to phasing out professional supervision, then all supervision, over the "next six to eight months." He also suggested that Kahlin engage in counseling, so that her "long

maintained victim's role" would not affect Luke's relationship with Peter in an unhealthy way.

On October 12, 2007, Peter sought to modify the parenting plan by filing a petition for major modification. However, the petition did not allege any specific substantial change in circumstances. Rather, Peter relied on the March 1 review order's provision for modification without the necessity of establishing adequate cause. The petition specifically stated it was not seeking adjustments to residential provisions under RCW 26.09.260(5), (7), or (9). Kahlin objected to the petition and asked the court to deny Peter's motion for an order establishing adequate cause. A commissioner found that the parties had waived the adequate cause requirement of RCW 26.09.270<sup>3</sup> and appointed Kelly Shanks as a parenting evaluator to make recommendations to the court.

Shanks issued her report in December 2008. She noted that "Peter blames Kahlin for the continued supervised visitation . . . . This is a further manifestation of his tendency to shift the focus from his own behavior and failure to make psychological progress." However, she opined that Kahlin had engaged in questionable actions in an attempt to obstruct Peter's effort to be with Luke. She also articulated concern that Peter might attempt to influence Luke's view of his mother, which would be damaging to Luke. She noted boundary issues that Peter had with Luke, stemming from Peter's lack of regard for another person's perspective. Finally, she recommended replacing Layton with a GAL, because

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<sup>3</sup> Adequate cause involves something more than prima facie allegations which, if proven, might permit inferences sufficient to establish grounds for a change in residential time. In re Marriage of Mangiola, 46 Wn. App. 574, 577, 732 P.2d 163 (1987).

of Layton's focus on Kahlin's "victim issues." Although Shanks characterized the majority of Peter's interaction with Luke as positive, she recommended that Peter's time with Luke continue to be supervised and that Peter pursue further treatment to meet some of the deficiencies she noted in her evaluation.

Shanks's report also contained a recommended plan to phase out supervision, contingent upon Peter meeting behavioral goals within six to nine months. To meet these goals, Shanks recommended that Peter continue therapy, including parent coaching. If Peter met these goals, Shanks recommended that the GAL have authority to gradually remove the supervision restriction.

In February 2009, the case went to trial. After Peter presented his case in chief, Kahlin moved to dismiss the modification action, because he failed to prove a basis under RCW 26.09.260 to modify the residential schedule.<sup>4</sup> Peter argued that the requirements of RCW 26.09.260 were inapplicable, due to the parties' agreement in the March 1 review order and Layton's recommendation issued under that review order that the parenting plan be revised. The trial court found there was no basis for a major modification under RCW 26.09.260(1) or (2) and denied Peter's petition, dismissing the case. The court also denied Peter's motion for reconsideration. Kahlin requested attorney fees and advance attorney fees on appeal. The trial court denied her request.

Peter appeals the trial court's denial of the major modification to the final

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<sup>4</sup> The record before us does not indicate that the parties made any pretrial motions to resolve these issues.

parenting plan and its denial of his motion for reconsideration. Kahlin cross-appeals the trial court's denial of attorney fees.

## DISCUSSION

### I. Standard of Review

We review a trial court's interpretation of a parenting plan de novo. In re Parentage of Smith-Bartlett, 95 Wn. App. 633, 636, 976 P.2d 173 (1999). We also review the trial court's interpretation of a statute de novo. In re Marriage of Watson, 132 Wn. App. 222, 230, 130 P.3d 915 (2006). We treat the trial court's unchallenged findings of fact regarding the parenting plan as verities on appeal. In re Marriage of Fiorito, 112 Wn. App. 657, 665, 50 P.3d 298 (2002).

### II. Effect of the Waiver of Adequate Cause

Peter's petition sought gradual removal of the requirement of supervised visits over a period of six months, and, after six months, residential time consisting of every other weekend, from Saturday at noon to Sunday at 6:00 p.m., as his work schedule allowed.

Peter contends the effect of the March 1, 2007 review order was not only a waiver of adequate cause, but also of substantial change in circumstances, the substantive standard for a major modification under RCW 26.09.260. The operative and contested language of the March 1 review order reads, "After October 1, 2007 either party shall have the right to petition the Court to modify the Father's visitation schedule, if either the Case Manager or the Guardian ad Litem so recommends. In this event, the parties agree to waive a finding of

adequate cause and a new parenting evaluator [will be] appointed by the Court at that time.”

Peter’s argument that the waiver of an adequate cause determination necessarily meant that the requirements of RCW 26.09.260(1) and (2) were also waived has no support in the language of the March 2007 review order. The language refers to waiver of the need for a finding of adequate cause. This is a finding required under RCW 26.09.270. Nothing in the language indicates any intention to relieve either party of the substantive requirements of RCW 26.09.260.

Peter relies on In re Marriage of Possinger, 105 Wn. App. 326, 19 P.3d 1109 (2001), and In re Marriage of Adler, 131 Wn. App. 717, 129 P.3d 293 (2006), for the proposition that a court, when reviewing a parenting plan, may conduct the review using the criteria for initial parenting plan in RCW 26.09.187 rather than the stricter standards for modification in RCW 26.09.260. Neither case is determinative of the issue.

In Possinger, this court told the parties at the time of their dissolution, in 1998, that it would review the initial parenting plan it had just implemented a year later, as imminent changes in the lives of the parents precluded the court from determining what would be best for the child. 105 Wn. App. at 329–30. When the court reviewed the parenting plan in 1999, it did so based upon the criteria of RCW 26.09.187. Id. at 331. The father appealed, contending that the trial court erred by treating the review under the criteria for initial parenting plans

(RCW 26.09.187), rather than under the criteria for modification of parenting plans (RCW 26.09.260). Id. at 332. The court, after an extensive review of legislative history of the Parenting Act, chapter 26.09 RCW, and related common law, held that “where the best interests of the child requires it, the trial court is not precluded by the Parenting Act from exercising its traditional equitable power derived from common law to defer permanent decisionmaking with respect to parenting issues for a specified period of time following entry of the decree of dissolution of marriage.” Id. at 333–37. Because the court had authority to defer formulation of the child’s residential schedule for a specific period of time, this court also held the trial court had properly considered the criteria in RCW 26.09.187 in formulating the 1999 parenting plan. Id. at 336–37. As this court explained, “The court’s formulation of a residential schedule to cover Anna’s school years was its initial decision in that regard, not a modification of its prior decision.” Id. at 337–38.

The facts here are distinct. The court entered a final parenting plan in 2003, where Luke’s residential time was to be spent with Kahlin. No residential time was to be spent with Peter, as there was initially a no-contact order, as well as other restrictions placed on their interaction once the no-contact order expired. Although the 2003 parenting plan specifically provided that either party could seek review of the plan pursuant to RCW 26.09.187, no other indication in the record suggests the court treated the 2003 plan as anything other than final. However, the parties agreed, as reflected in the March 1, 2007 review order, to

delete the original provision providing for review under RCW 26.09.187 and replace it with the contested language, which did not specifically reference either RCW 26.09.187 or RCW 26.09.260.

In Adler, the final parenting plan contained a review provision that differed materially from the one at issue here, as it waived the substantial change of circumstances requirement of RCW 26.09.260. 131 Wn. App. at 721. It read “[a]t the request of either party by 12-31-01, as recommended by Dr. Stuart Greenberg, the residential schedule and decision[-]making provisions herein shall be subject to review without the statutorily required showing of a change in circumstances.” Id. (alterations in original). The parties stipulated to waiver of the adequate cause requirement of RCW 26.09.270. Id. This court compared the language in the provision for review with the statutory language of RCW 26.09.260. Id. at 725. Because the original order eliminated the need to show a substantial change in circumstances requirement of RCW 26.09.260, the order implied that statute would otherwise be the standard on review. Id. This court concluded the trial court had not erred in providing for a later review of the parenting plan or in providing that the standard of review be RCW 26.09.260, with waiver of the substantial change of circumstances.<sup>5</sup> Id. at 725.

Instead of waiving the substantive requirements of RCW 26.09.260, as the parties did in Adler, the parties here agreed to waive the threshold requirement of RCW 26.09.270—adequate cause. Instead, it gave either party

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<sup>5</sup> In other words, because the parties did not have to show a substantial change in circumstances, the trial court was correct to ignore the threshold requirement and analyze whether the parenting plan warranted modification under the substantive criteria of RCW 26.09.260(2).

the right to petition to change Peter's visitation schedule, *so long as* the case manager or the GAL recommended it.

Further, to read the review provision as applying the criteria of RCW 29.09.187 rather than RCW 26.09.260, as Peter advocates, is an impermissible stretch, particularly when the agreed language replaced the prior provision that review should be conducted under RCW 26.09.187. As the court in Adler explained, the primary purpose of the threshold adequate cause requirement is to prevent movants from harassing non-movants by obtaining a useless hearing. 131 Wn. App. at 724. "If the party protected by the threshold requirement freely stipulates to adequate cause, this concern is not present." Id. The best interests of the children remain protected by the standards in RCW 26.09.260 as applied by the court in the modification proceeding. Id.

The trial court correctly subjected Peter's petition to the standards for modification under RCW 26.09.260.

### III. Denial of Petition

While the majority of Peter's briefing addresses whether RCW 26.09.260(1) and (2) apply, and not whether the trial court applied them correctly, we nevertheless assess the propriety of the trial court's denial of Peter's petition.<sup>6</sup>

A major modification is permissible under RCW 26.09.260(1) when a substantial change has occurred in the circumstances of the child or the

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<sup>6</sup> We do so out of an abundance of caution, even though Peter has only assigned error to the trial court's choice of the legal standard, arguing that the court erred by subjecting his petition to the standard for a major modification.

nonmoving party and that modification is in the best interest of the child and is necessary to serve the best interests of the child. A minor modification is permissible under RCW 26.09.260(5) when a substantial change has occurred in the circumstances of the child or of either parent, and the modification serves the best interests of the child.

Peter sought a major modification,<sup>7</sup> which is further subject to RCW 26.09.260(2). Subsection (2) provides that the residential schedule established in the parenting plan must be maintained unless:

- (a) The parents agree to the modification; or
- (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan; or
- (c) The child's present environment is detrimental to the

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<sup>7</sup> There is a disconnect between Peter's petition for major modification and the relief actually requested in the parenting plan. Peter was seeking residential time that would not have changed the residence Luke resided in the majority of the time. It also appears that his proposed parenting plan may not have resulted in a schedule that exceeded ninety overnights per year with Peter. However, Peter's petition specifically stated it was not moving for a modification under RCW 26.09.260(5).

If Peter had pleaded his petition as a minor modification, the court could have ordered adjustments to the residential aspects of a parenting plan without consideration of the factors in RCW 26.09.260(2), as long as the change was in Luke's best interest. RCW 26.09.260(5), (5)(c) (defining a minor modification as one that does not change the residence the child resides in the majority of the time and does not result in a schedule that exceeds ninety overnights per year in total with the moving parent). The trial court noted this disconnect when it remarked that Peter should have pleaded in the alternative under RCW 26.09.260(5)(c). However, when the trial court noted that Peter should have pleaded under RCW 26.09.260(5) in the alternative, Peter did not request to do so. Nor did the court invoke its equitable powers to allow Peter to amend his petition to conform to the evidence. Possinger, 105 Wn. App. at 333-34 (a trial court retains its equitable power over matters relating to the welfare of minor children to the extent consistent with the Parenting Act).

Peter submitted In re Marriage of Flynn, 94 Wn. App. 185, 972 P.2d 500 (1999), as supplemental authority under RAP 10.8 for the proposition that "it is an abuse of discretion to decline to grant relief under the standards for a minor modification in RCW 26.09.260(5) where those standards are met, even if the petitioner in his pleadings sought only a major modification." Peter's articulation of the holding of this case is inaccurate. Flynn concerned whether the court had erred by failing to decide whether adequate cause existed for a minor modification when the mother framed her petition as a major modification. 94 Wn. App. at 187-88. Because the mother's petition contained prima facie showing of adequate grounds for a minor modification, it was error for the commissioner to decline to decide whether the adequate cause requirement had been demonstrated. Id. at 195-96. Here, the parties waived adequate cause. The issues are distinct.

child's physical, mental, or emotional health, and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court . . .

RCW 26.09.260(2). The parties agree that RCW 26.09.260(2)(c) was the only applicable subsection in this case.

The trial court found that no substantial change had occurred in the circumstances of the child or the mother. Absent a finding of a substantial change of circumstances of the child or the nonmoving party, the trial court must deny any major modification under RCW 26.09.260(1). The trial court also found the child's current home was not a detriment to the child. Without a finding of detriment, Peter could not satisfy RCW 26.09.260(2)(c).

Further, the trial court noted in both its oral and written rulings, that none of the witnesses specifically said that unsupervised visits and increased residential time was in the best interest of Luke: "I didn't hear any of the witnesses saying that they believed that it would be in the best interest of Luke to increase residential time or make the visits unsupervised. It didn't appear that Luke was asking for unsupervised time, it didn't appear that Luke was asking to have more time. It appeared that he was comfortable with the existing circumstance because he perceives at 8 years old that's the norm." Absent a finding that a change is in the best interests of the child, the trial court must deny either a major modification under RCW 26.09.260(1) or a minor modification under RCW 26.09.260(5)(c).

Peter has not challenged these findings. The trial court did not err in denying the petition.

#### IV. Adjustment of Nonresidential Provisions

Peter asserts the trial court was without authority to modify the parenting plan once it dismissed his petition for modification.<sup>8</sup> The court entered an order modifying the parenting plan, instituting the following changes: (1) removing the current case manager, Layton, in favor of a long-term GAL; (2) ordering the new case manager/GAL to monitor Peter to ensure compliance with continued mental health, pharmacological, and therapeutic treatment, and ordering that Cathy Eisen remain as the visitation supervisor; (3) allowing the case manager to permit phone access; (4) formalizing the parties' agreement to hire a parenting coach; (5) mandating that the case manager inform the Court about compliance with the order; (6) revising the March 1, 2007 review order's waiver of adequate cause by stating that no other modifications could be brought without an adequate cause hearing under RCW 26.09.270; and (7) maintaining in full force and effect all provisions of the final parenting plan and the March 1 review order not modified by the current order.

RCW 29.09.260(10) provides the court authority to make changes to the nonresidential aspects of the parenting plan: "The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the

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<sup>8</sup> While the court may have said it was dismissing the petition, we understand that the court was denying the relief sought in the petition. The petition and action was not dismissed until the final orders were entered.

adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.” Further, the court has authority to clarify a decree by defining the parties’ respective rights and obligations. In re Marriage of Christel, 101 Wn. App. 13, 22, 1 P.3d 600 (2000). A clarification is not a modification: a modification occurs when a party’s rights are either extended beyond or reduced from those originally intended in the decree. Id.

None of the court’s seven changes extend or reduce the parties’ rights, with the exception of the sixth, which reinstates the statutory requirement of the adequate cause hearing. However, as Kahlin points out, Shanks (the parenting evaluator in the current petition proceeding) had expressed concern about the negative impact that a modification proceeding inflicts on Luke. Reinstating the adequate cause requirement is a reasonable response by the court to address Shanks’s concern. The court heard testimony about what was in Luke’s best interest, about Peter’s continuing need for treatment, and about Kahlin’s progress in therapy. This testimony is sufficient to support each of the seven changes made in the court’s order.

To support his argument that the court acted beyond its authority, Peter cites Watson and In re Marriage of Shryock, 76 Wn. App. 848, 849–50, 888 P.2d 750 (1995). Neither case is ultimately relevant. In Watson, after the court concluded there was insufficient evidence of alleged sexual abuse by the father of the daughter, it denied the mother’s modification petition. 132 Wn. App. at

238. However, the court then ordered visitation restrictions on grounds that neither of the parties had contemplated. Id. at 238–39 (reversing the trial court and remanding for reinstatement of the original parenting plan).

In Shryock, the father petitioned for a change in residential placement under RCW 26.09.260(2)(b). 76 Wn. App. at 849–50. The trial court found that the father had not met his burden. Id. at 850. However, instead of dismissing the petition, the trial court reduced the father's residential time and granted the mother sole decision-making authority. Id. at 852. Division Three held that the court lacked authority to make these changes after finding there was no statutory basis for modifying the parenting plan under RCW 26.09.260. Id. at 851–52. Further, there was no indication that the mother had cross-petitioned for a modification, so the court should have retained the original parenting plan. See id. at 850–51; see also Watson, 132 Wn. App. at 238 (discussing Shryock and positing that, absent a valid cross-petition, the correct action is to reinstate the original parenting plan). These were changes to the residential schedule, which cannot be done under RCW 26.09.260(10), and decision making rights of a parent which were not petitioned for and cannot be done as a clarification.

Unlike Shryock and Watson, the trial court here did not impermissibly modify the residential provisions of the parenting plan or impose restrictions the parties had not contemplated by the evidence. The court had authority under RCW 26.09.260(10) to modify and/or clarify the parenting plan as it did. The trial court did not err in ordering the nonresidential changes to the parenting

plan.

V. Attorney Fees

Kahlin requested an award of attorney fees for trial and advance attorney fees for appeal. She stated alternative bases for this request, arguing that Peter's petition was frivolous, entitling her to fees and costs under the review order;<sup>9</sup> that consideration of her need and Peter's ability to pay supported an award under RCW 26.09.140; and that Peter was intransigent. The trial court declined to award fees, finding that the proceeding was not frivolous, that Kahlin's need and ability to pay did not support an award of fees, and that Peter had not acted in a way that constituted intransigence. The court denied attorney fees in advance of defending the appeal as premature.

Peter's petition was not frivolous. The 2007 report by Layton recommended consideration that supervised visitation be phased out over the "next six to eight months." This recommendation was sufficient to provide Peter a basis to argue that his circumstances had changed. It was enough for Peter to pursue a modification and sufficient for us to conclude doing so was not frivolous.

Peter pursued a major modification covered by RCW 26.09.260(1) and (2) rather than a minor modification covered by RCW 26.09.260(5). He claimed, however, that the language in the March review order that waived the adequate cause showing also waived the substantive requirements of RCW 26.09.260(1)

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<sup>9</sup> The March 1, 2007 review order specified that "[i]n the event the petition is found to be frivolous, the Court shall award reasonable, actual attorney's fees and costs to the non-moving party."

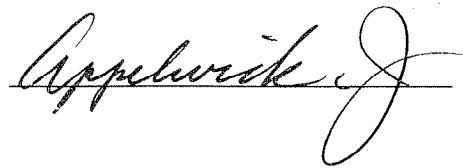
and (2) and that RCW 26.09.187 applied. Even if this scope of waiver claim was itself frivolous, it is a question of law that could have been resolved by motion before trial. But, resolving that RCW 26.09.260(1) and (2) applied would not have resolved the factual issue of whether Peter could demonstrate the necessary change in circumstances of the child or the mother. Assuming further that the trial court would have determined, on the appropriate motion, that no facts supported a change in circumstances of the mother or the child, Peter still had enough evidence to argue a change in his own circumstances. At that point, Peter could have abandoned the petition for a major modification and sought a minor modification, or sought an immediate appeal. Since a basis existed on this record for a trial on some form of modification, the trial court did not err in denying fees based on a frivolous petition.

Nor did the trial court err in finding that Peter was not intransigent. Intransigence is a recognized equitable ground for an award of attorney fees. In re Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Intransigence exists where a party has created unnecessary delay and obstruction, or makes the trial unduly difficult and costly. Id. at 708. While Peter argued he should be granted a major modification without having to meet the substantial change in circumstances standard and held to this position throughout trial, this was not intransigent. As noted above, the legal issue could have been resolved early in the litigation had Kahlin challenged Peter's position. Similarly, while he sought relief well beyond what Layton recommended, to do so

did not constitute intransigence. And while these choices appear to have disserved his objective of spending more time with his son, they did not inappropriately affect the course of the litigation.

Finally, the trial court did not err in declining to award Kahlin fees under RCW 26.09.140.<sup>10</sup> A trial court's decision not to award fees under RCW 26.09.140 will be reversed only if "untenable or manifestly unreasonable." In re Custody of Salerno, 66 Wn. App. 923, 926, 833 P.2d 470 (1992). Although Peter has a higher monthly net income, the parties' financial declarations show that Peter has amassed significantly more debt than Kahlin. There is no indication that the trial court abused its discretion.

Finally, Kahlin requests attorney fees on appeal. RCW 26.09.140. Whether to award fees under RCW 26.09.140 is entirely discretionary. We decline to award fees to either party.

A handwritten signature in cursive script, reading "Appelwick J.", written over a horizontal line.

WE CONCUR:

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<sup>10</sup> "The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment." RCW 26.09.140.

Leach, J.

Cox, J.